आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:20210364SW000051091S)

क फाइल संख्या : File No : V2(GST)/45 to 47/Ahd-South/2020-21

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-043 to 45/20-21
दिनाँक Date : 18-03-2021 जारी करने की तारीख Date of Issue :

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No ZV2404200283226, ZS2404200283171 and ZV2404200283082
दिनाँक: 15.04.2020 issued byDeputy Commissioner, Central GST, Division-VI, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Amplus Capital Advisors Private Limited, 24, Government Servant Society, Near Municipal Market, C.G.Road, Ahmedabad-380009.

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइटwww.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in.

ORDER-IN-APPEAL

1. This order arises out of appeals, as mentioned in the table below filed by M/s Amplus Capital Advisors Private Limited, 24, Government Servant Society, Near Municipal Market, C.G.Road, Ahmedabad-380009 (herein referred to as the *'appellant'*) against the Refund Sanction/Rejection Orders issued in "FORM-GST-RFD-06" shown against the respective Appeal in the table below (hereinafter referred to as "impugned orders"), passed by the Deputy Commissioner, Central GST, Division-VI, Ahmedabad South (hereinafter referred to as *'the adjudicating authority'*) rejecting refund claim filed by the appellant. Since the impugned orders have been passed by the adjudicating authority in respect of the refund claims filed by the appellant in the same matter, the relevant appeals are being taken up for consideration under common appeal proceedings.

Sr. no.	Appeal No.	Filed against Order No. & Date	Period of Dispute	Central Tax (Rs.)	State Tax (Rs.)
1	47/Ahd-South/20-21	ZV2404200283082 dated 15.04.2020	Sept-2017	6,45,469	6,45,469
2	46/Ahd-South/20-21	ZS2404200283171 dated 15.04.2020	January-2018	6,45,305	6,45,305
3	45/Ahd-South/20-21	ZV2404200283226 dated 15.04.2020	March-2018	6,29,691	6,29,691

2. Facts of the case, in brief are that the appellant is having GSTIN-24AAKCA0426F1Z6 and engaged in providing "Management or Business Consultant Service". The current committed corpus of Amplus Realty Fund-II is Rs. 183.50 Crores. Amplus Realty Fund-II has agreed to pay a prescribed percentage of such amount to the applicant as management fees. The details of the taxable amount received towards management fees charged to Amplus Realty Fund-II in respect of service provided by the applicant and payment of the amounts of CGST & SGST leviable thereon being reflected in the relevant forms GSTR-1 & GSTR-3B, as submitted by the appellant are reproduced as below:

Invoice date	Invoice No.	Base Amount (Rs.)	CGST @ 9% (Rs.)	SGST @ 9% (Rs.)	Relevant Appeal no.
22.3.2018	Fund-II-4	6996562	629691	629691	45/Ahd-South/20-21
23.01.2018	Fund-II-3	7170060	645305	645305	46/Ahd-South/20-21
31.08.2017-21.2017-18		7171875	645469	645469	47/Ahd-South/20-21

2.1 Subsequently, because of sluggishness in the real estate sector, Amplus Realty Fund-II decided to wind up and to restrict its capital commitment from investors to 20% and accordingly, total capital commitment drawdown. Since, the appellant is entitled to the management fees calculated at the prescribed percentage, it was mutually agreed that the appellant would refund the management fees to that extent to Amplus Realty Fund-II. Accordingly, by issuing credit notes as mentioned below, the appellant refunded the management fees (alongwith applicable GST) to Amplus Realty Fund-II.

Invoice No. & Date	Credit Note No.	Credit Note issued on date	Base Amount (Rs.)	CGST @ 9% (Rs.)	SGST @ 9% (Rs.)	Relevant Appeal no.
Fund-II-4 22.3.2018	4/2019-20	10.06.2019	6996562	629691	629691	45/Ahd-South/20-21
Fund-II-3 23.1.2018	5/2019-20	10.06.2019	7170060	645305	645305	46/Ahd-South/20-21
2/2017-18 31.08.2017	6/2019-20	10.06.2019	7171875	645469	645469	47/Ahd-South/20-21

2.2 After issuance of the Credit Notes, the appellant filed refund claims for refund of CGST and SGST already paid by them against the respective invoices. The refund claims filed by the appellant have been rejected by the adjudicating authority vide the impugned orders, details of which are mentioned as below:

Invoice No.	Credit Note No. & Date	Impugned Order No. & Date, passed against respective refund claim	CGST @ 9% (Rs.)	SGST @ 9% (Rs.)	Relevant Appeal no.
Fund-II-4 22.3.2018	4/2019-20 10.06.2019	ZV2404200283226 dated 15.04.2020	629691	629691	45/Ahd-South/20-21
Fund-II-3 23.1.2018	5/2019-20 10.06.2019	ZS2404200283171 dated 15.04.2020	645305	645305	46/Ahd-South/20-21
2/2017-18 31.08.2017	6/2019-20 10.06.2019	ZV2404200283082 dated 15.04.2020	645469	645469	47/Ahd-South/20-21

In all the three cases mentioned above, the impugned orders have been issued by the adjudicating authority in prescribed form i.e. Form-GST-RFD-06, rejecting the refund claim of the appellant on the ground that:

"Claimant issued credit note after time limit over according to Section 34 (2) of CGST Act, 2017. Also, they did not read SCN properly. Reply submitted by the claimant is not proper. Hence, the refund claim filed by the claimant is rejected."

3. Being aggrieved, the appellant has filed the present appeals on the grounds re-produced as under:

(i) The impugned order has been passed without granting an opportunity of being heard to them and therefore, violated the principles of natural justice. They relied upon the following case laws wherein it has been held that personal hearing is required as per principle of natural justice to prevent miscarriage of justice:

- *M/s. Sri Gayatri Cashews Versus The Assistant Commissioner of GST and Central Excise 2019 (1) TMI 610-Madras High Court*
- *Uma Nath Pandey Versus State of UP 2009 (3) TMI 526-Supreme Court*

(ii) Even assuming without admitting that there was a minor deviation from the provisions of Section 34 (2) of the Central Goods and Services Tax, 2017, such a delay in credit note was purely a procedural lapse on the part of the appellant. The benefit of what is just to a person should not be denied to him merely because a certain procedure has not been followed. They relied upon the following case laws in support of their contention:
Sambhaji Versus Gangabai 2009 (240) ELT 161 (SC)

- *M/s. Shree Cement Limited Versus CCE, Jaipur- 2018 (11) TMI 153- CESTAT, New Delhi*
- *M/s. Crest Premedia Solutions Pvt. Ltd. Versus Commissioner of Central Excise, Pune-III 2015 (2) TMI 145-CESTAT, Mumbai*

4. Personal Hearing in the matter was through virtual mode held on 25.02.2021. Shri Parag Shah, Chartered Accountant, appeared on behalf of the appellant and re-iterated the written submissions made in the appeal memorandum of the said appeals.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the present appeal and oral submissions made at

the time of Personal Hearing. After going through the facts of the case, it is seen that the issue raised in the appeal pertains to refund claim filed by the appellant in respect of the management fees refunded by them to the service recipient, by issuing credit notes for the amount refunded alongwith applicable GST.

5.1 In the present issue, it is observed that the appellant has raised their contention that the impugned orders have been passed by the adjudicating authority, without granting an opportunity of being heard to them and therefore, violated the principles of natural justice. It is observed from the records attached with the appeal memorandum that in respect of all the three cases, a notice for rejection of application for refund in "FORM-GST-RFD-08" has been issued by the adjudicating authority stating the reasons due to which the subject refund claim is liable for rejection and further, it was also directed to the appellant to furnish a reply to the notice within fifteen days from the date of service of the notice and the appellant was also directed to appea before the adjudicating authority on 25.03.2020 for personal hearing.

5.2 Further, as per the details submitted under appeal memorandum by the appellant it is observed that they were informed by the department through e-mail dated 08.04.2020 that a personal hearing could be held through electronic media and if the appellant did not wish to attend the hearing through electronic media, they could submit their written submission through e-mail. I also find that the appellant has not made any submission to the adjudicating authority till the issuance of the impugned orders.

5.3 I also find that as per Section 54 (7) of the CGST Act, 2017, "The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects." Further, the provisions of Rule 92 (3) of CGST Rules, 2017 also provides that:

> *"Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:"*

Accordingly, I find that the adjudicating authority is also bound to process the refund claim and to issue the orders in a time bound manner, as prescribed under the provisions of Section 54 of the CGST Act, 2017 and

Rule 92 of the CGST Rules, 2017. In the present case, I observed that the appellant has neither submitted proper reply to the notice issued to them in *"FORM GST RFD-08"* within prescribed time limit nor they appeared for personal hearing granted to them before the adjudicating authority. Hence, I do not find any force in the said contention of the appellant that the principles of natural justice have not been followed by the adjudicating authority while issuing the impugned orders.

6.1 Now, as regards the issue of non-compliance of the condition of Section 34 of the CGST Act, 2017, it is relevant to go through the legal provisions In order to analyze the issue in proper perspective. The provisions contained under Section 34 of the CGST Act, 2017 are re-produced below:

"34. Credit and debit notes.—

(1) [Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient [one or more credit notes for supplies made in a financial year] containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person."

In terms of the above provisions of Section 34 of the CGST Act, 2017, I find that the credit note, issued if any, has to be declared in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier.

6.2 In all the present cases, it is undisputed that the details of the credit notes were furnished in the relevant GST return for the month of June 2019 which was filed by the appellant on 11.07.2019 and this fact is submitted by the appellant in their appeal memorandum also. Further, the appellant

themselves accepted the fact that there was a delay occurred in furnishing the said details by them, which is in violation of the provisions the Section 34 of the CGST Act, 2017.

6.3 Further, the appellant relying on certain judgements of the Tribunal as mentioned in above para-3 (ii) contended that *"there was a minor deviation from the provisions of Section 34 (2) of the Central Goods and Services Tax, 2017, such a delay in credit note was purely a procedural lapse on the part of the appellant. The benefit of what is just to a person should not be denied to him merely because a certain procedure has not been followed."*

As regards the judgements relied upon by the appellant in support of their contention, it is observed that both the said cases were pertaining to the situation wherein certain procedural requirements as prescribed under the Cenvat Credit Rules, 2004 were not followed. Whereas, I find that in the present case, the time limit prescribed under the provisions of Section 34 (2) of the Central Goods and Services Tax, 2017 has not been adhere to by the appellant. Hence, considering the facts of the present case, both the judgments of Hon'ble Tribunal are not squarely applicable to these cases.

6.4 I also find that in a similar case of MMTC Limited Versus Commr. of C.Ex., Cus. & S.T, Visakhapatnam-I reported at [2019 (26) GSTL 248 (Tri.-Hyd.), the Hon'ble CESTAT vide Final Order No. A/30503/2018 dated 26.04.2018 held that:

> ***8.*** *I find that the key issue to be decided by me is whether the limitation of time imposed by the notification for claiming the refund of Service Tax on inputs which went into export of goods can be altered by reckoning the date on which the appellant received the invoices instead of the date of Let Export Order as laid down in the notification. Firstly, the notification is a subordinate legislation made by the Government in exercise of the powers delegated by the Parliament. This power is given to the Government and not to the officers or to this Tribunal. Hence, the provisions of this notification including the time limit and the date of reckoning the time limit cannot be modified by the officers or by this Tribunal. It has been laid down in a catena of judgments by the Hon'ble Supreme Court and High Courts that a statutory time-limit has to be adhered to and the Courts cannot modify them. Of course, the Hon'ble Supreme Court and High Courts can and do examine the validity of the laws and subordinate legislations and pass judgments annulling or modifying them but the Tribunal, as a creation of the statute cannot do so. This has been explained clearly by the Hon'ble Supreme Court in the case of UOI v. Kirloskar Pneumatics Company [1996 (84) E.L.T. 401 (S.C.)] in which it was held:*
>
> > *"According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr. Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. Learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so,*

notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law."

In the case of IOCL v. UOI [2012 (281) E.L.T. 209 (Guj.)], the Hon'ble High Court of Gujarat held:

"With respect to the question of limitation, we have by a separate order passed in the case of this very petitioner in Special Civil Application No. 12072 of 2011 held against the petitioner making following observations :

"We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11E, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.

Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 had the occasion to deal with the question of delayed claim of refund of Customs and Central Excise. Per majority view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.

The decision of the Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a different factual background. It was a case where the refund claim was filed beyond the period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under :

"32. In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May, 1999 and 10th June 1999, the due date for application of rebate of duty was 20th November, 1999 and 10th December, 1999 respectively. However, both the applications were made belatedly on 28th December, 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May, 2000, wherein the limitation for applying for refund of any duty was enlarged from 'six months' to 'one year'. Although the amendment came into force with effect from 12th May, 2000, the question is whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May, 2000?"

In the case of Collector of Central Excise v. Doaba Co-operative Sugar Mills Ltd. [1988 (37) E.L.T. 478 (S.C.)] Hon'ble Supreme Court held :

> *"This Court observed that the Customs Authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefore in the relevant provisions of the Customs Act, 1962".*

In the case of Everest Flavours Ltd. v. The Union of India and Others on 29 March, 2012 [2012 (282) E.L.T. 481 (Bom.)] Hon'ble High Court of Bombay held:

> *"Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law."*
>
> *Thus, it is evident that the time limit laid down in the statute or notification for claiming a refund is sacrosanct and this cannot be modified either by the officers or by the Tribunal when the statute itself does not provide for any such relaxation.*

In view of the above, it is settled law that where the statute provides a period of limitation, the provision has to be complied with as a mandatory requirement of law. Hence, I do not find merit in the contention of the appellant that the delay in credit note was purely a procedural lapse and accordingly refund should not be denied to him merely because a certain procedure has not been followed.

7. Accordingly, I do not find any merit in the contention of the appellant so as to interfere in the impugned orders issued by the adjudicating authority (as mentioned in the table under Para-1 above) and therefore, I reject all the Appeals (as mentioned in the table under Para-1 above) filed by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.

18/03/2021.

(Mukesh Rathore)
Joint Commissioner (Appeals)

Date: .03.2021.

Attested

(M.P.Sisodiya)
Superintendent (Appeals)
CGST, Ahmedabad.

By Regd. Post A. D/Speed Post

To
M/s . Amplus Capital Advisors Pvt. Ltd,
Plot No. 24, Government Servant Society,
Adjoining Municipal Market,C.G.Road,
Navrangpura, Ahmedabad-380009

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Commissioner, CGST Appeals, Ahmedabad.
4. The Dy./Asst. Commissioner, Central GST, Division-VI, Vastrapur, Ahmedabad South.
5. The Dy./Asstt. Commissioner, CGST, HQ (Systems), Ahmedabad South. (for uploading OIA)
6. Guard File.
7. P.A. File.